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**DEPARTMENT OF STATE**

**22 CFR Part 126**

**RIN 1400-AC93**

**[Public Notice: 7682]**

**Amendment to the International Traffic in Arms Regulations: Sudan**

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Department of State is amending the International Traffic in Arms Regulations to include the Republic of the Sudan as a proscribed destination, pursuant to a United Nations Security Council arms embargo, and to clarify that this policy does not apply to the Republic of South Sudan.

**EFFECTIVE DATE:** This rule is effective [insert date of publication in the *Federal Register*].

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles B.

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**SUPPLEMENTARY INFORMATION:** Section 126.1(v) is added to set out U.S. policy on arms exports to the Republic of the Sudan, in accordance with UN Security Council resolutions imposing an arms embargo and recent political developments in Sudan. UNSC resolution 1556, adopted July 30, 2004, imposes an arms embargo on non-governmental entities and individuals operating in Darfur, with certain exceptions. Subsequently, UNSC resolution 1591, adopted on March 29, 2005, expanded the arms embargo to all parties to the N'djamena Ceasefire Agreement, including the Government of the Republic of Sudan. UNSC resolution 1945, adopted on October 14, 2010, reaffirmed and strengthened the arms embargo. Accordingly, it is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in the Republic of the Sudan. The exceptions, as provided in the referenced resolutions, are for (1) supplies and related technical training and assistance to monitoring, verification, or peace support operations, including those authorized by the UN or operating with the consent of the relevant parties; (2) supplies of non-lethal military equipment intended solely for humanitarian, human rights monitoring, or protective uses, and related technical training and assistance; (3) personal protective gear for

the personal use of United Nations personnel, human rights monitors, representatives of the media, and humanitarian and development workers and associated personnel; and (4) assistance and supplies provided in support of implementation of the Comprehensive Peace Agreement. Licenses submitted pursuant to these exceptions will be considered on a case-by-case basis.

Sections 126.1(c) and (d) are revised to change “Sudan” to “The Republic of the Sudan.”

On July 9, 2011, the Republic of South Sudan declared independence from Sudan and was recognized as a sovereign state by the United States. The policy of denial as it applies to the Republic of the Sudan does not apply to the Republic of South Sudan. Licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in the Republic of the South Sudan will be considered on a case-by-case basis.

## **REGULATORY ANALYSIS AND NOTICES:**

### *Administrative Procedure Act*

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function

are exempt from §553 (Rulemaking) and §554 (Adjudications) of the Administrative Procedure Act. Since the Department is of the opinion that this rule is exempt from 5 U.S.C. 553, it is the view of the Department of State that the provisions of §553(d) do not apply to this rulemaking. Therefore, this rule is effective upon publication. The Department also finds that, given the national security issues surrounding U.S. policy towards the Republic of the Sudan, notice and public procedure on this rule would be impracticable, unnecessary, or contrary to the public interest; for the same reason, the rule will be effective immediately. *See* 5 U.S.C. 808(2).

*Regulatory Flexibility Act*

Since this amendment is not subject to 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

*Unfunded Mandates Act of 1995*

This amendment does not involve a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

*Executive Orders 12372 and 13132*

This amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

*Executive Order 12866*

The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. However, the Department has reviewed the proposed rule to ensure its

consistency with the regulatory philosophy and principles set forth in the Executive Order.

*Executive Order 12988*

The Department of State has reviewed the proposed amendment in light of sections 3(a) and 3(b) (2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Executive Order 13563*

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

*Executive Order 13175*

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

*Paperwork Reduction Act*

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

### **List of Subjects in 22 CFR Part 126**

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 126 is amended as follows:

### **PART 126 – GENERAL POLICIES AND PROVISIONS**

1. The authority citation for part 126 continues to read as follows:

**Authority:** Secs. 2, 38, 40, 42, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p.79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p.899; Sec. 1225, Pub. L. 108-375; Sec. 7089, Pub. L. 111-117.

2. Section 126.1 is amended by revising paragraphs (c)(11) and (d), and adding paragraph (v), to read as follows:

#### **§126.1 Prohibited exports and sales to certain countries.**

\* \* \* \* \*

(c) \* \* \*

(11) The Republic of the Sudan (see also paragraph (v) of this section).

(d) *Terrorism.* Exports to countries which the Secretary of State has determined to have repeatedly provided support for acts of international terrorism are contrary to the foreign policy of the United States and are thus subject to the policy specified in paragraph (a) of this section and the requirements of section 40 of the Arms Export Control Act (22 U.S.C. 2780) and the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986 (22 U.S.C. 4801, note). The countries in this category are: Cuba, Iran, the Republic of the Sudan, and Syria.

\* \* \* \* \*

(v) *Sudan.* It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in the Republic of the Sudan, except a license or other approval may be issued, on a case-by-case basis, for:

- (1) Supplies and related technical training and assistance to monitoring, verification, or peace support operations, including those authorized by the United Nations or operating with the consent of the relevant parties;
- (2) Supplies of non-lethal military equipment intended solely for humanitarian, human rights monitoring, or protective uses and related technical training and assistance;



- (3) Personal protective gear for the personal use of United Nations personnel, human rights monitors, representatives of the media, and humanitarian and development workers and associated personnel; or
- (4) Assistance and supplies provided in support of implementation of the Comprehensive Peace Agreement.

[Note to §126.1](#). On July 9, 2011, the Republic of South Sudan declared independence from Sudan and was recognized as a sovereign state by the United States. This policy does not apply to the Republic of South Sudan. Licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in the Republic of the South Sudan will be considered on a case-by-case basis.

November 2, 2011

(Date)

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